

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SCOTT TOELK a/k/a	:	
SCOTT DIDONATO	:	
and	:	
RICHARD TOELK	:	CIVIL ACTION NO. : <b>09-5630</b>
and	:	
VERONICA TOELK-GARBARINO	:	
	:	
v.	:	
	:	
PAUL MORRISSEY	:	
and	:	
ANDY WARHOL FOUNDATION FOR	:	
THE VISUAL ARTS, INC.	:	
and	:	
IMAGE ENTERTAINMENT, INC.	:	
and	:	
SCORE-SARX COMPANY	:	

**PLAINTIFFS' RESPONSE TO DEFENDANTS,**  
**PAUL MORRISSEY and IMAGE ENTERTAINMENT, INC.'S**  
**MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

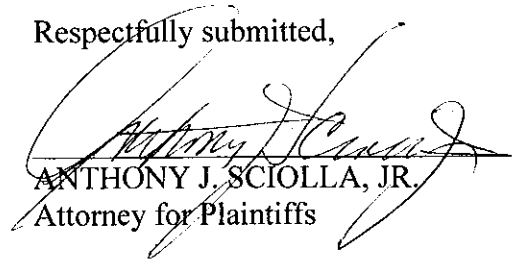
The Plaintiffs' Response to Defendants, Paul Morrissey and Image Entertainment, was to file their own Voluntary Dismissal of the case based on the facts that they have located and obtained their father's death certificate which would cause the opening of an estate for the late Richard Toelk, who was a resident of Pennsylvania and the fact that the movies in question were purchased in Pennsylvania.

WHEREFORE, Plaintiffs request this Honorable Court to grant the Order for Voluntary Dismissal without prejudice. This will not affect the Defendants in question due to the fact that any future actions brought in New York, where Paul Morrissey resides, would be brought by the Estate of Richard Toelk and not the three (3) children in

---

question.

Respectfully submitted,



ANTHONY J. SCIOLLA, JR.  
Attorney for Plaintiffs

Date: 5/4/10

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SCOTT TOELK a/k/a	:	
SCOTT DIDONATO	:	
and	:	
RICHARD TOELK	:	CIVIL ACTION NO. :: <b>09-5630</b>
and	:	
VERONICA TOELK-GARBARINO	:	
	:	
v.	:	
	:	
PAUL MORRISSEY	:	
and	:	
ANDY WARHOL FOUNDATION FOR	:	
THE VISUAL ARTS, INC.	:	
and	:	
IMAGE ENTERTAINMENT, INC.	:	
and	:	
SCORE-SARX COMPANY	:	

**PLAINTIFFS' MEMORANDUM OF LAW**  
**IN SUPPORT OF PLAINTIFFS' RESPONSE**  
**TO DEFENDANTS, PAUL MORRISSEY and IMAGE ENTERTAINMENT'S**  
**MOTION TO DISMISS SECOND AMENDED COMPLAINT**

With careful review of the arguments raised by Defendants, Paul Morrissey ("Morrissey") and Image Entertainment ("Image") that dealt with venue, it is the Plaintiffs' position that their recent discovery of their father's death certificate has caused them to file a withdrawal of this lawsuit. It is the Plaintiffs' contention that with the information supplied in the earlier motions by Defendant, Morrissey, has allowed them to get a better understanding of the sale and rental of the film, "All Aboard the Dreamland Choo Choo". It should be noted that their late father, Richard Toelk, was a resident of Pennsylvania, having worked in the trucking business up until the time of his death in 1990. Defendant, Morrissey's declaration setting forth that he began writing and selling the film as far back as 1967 and also his admission that he never had the late Richard

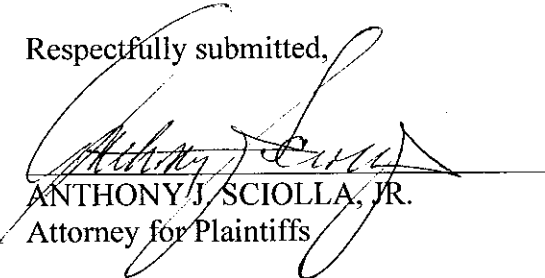
Toelk sign any kind of waiver in order to show this film has created an ongoing contractual matter between the Estate of Richard Toelk and Defendant, Paul Morrissey.

Once this information came to light, it was the Plaintiffs' position that they should withdraw their underlying lawsuit and open an estate for their father. It will be up to the Estate whether to file a contract matter against Defendant, Morrissey in Pennsylvania or in New York.

Plaintiffs request that this Honorable Court grant the voluntary dismissal as a response to the issues raised by way of venue in the Morrissey/Image Motion to Dismiss.

WHEREFORE, Plaintiffs request that this Honorable Court enter the appropriate Order dismissing the lawsuit without prejudice.

Respectfully submitted,



ANTHONY J. SCIOLLA, JR.  
Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SCOTT TOELK a/k/a	:	
SCOTT DIDONATO	:	
and	:	
RICHARD TOELK	:	CIVIL ACTION NO. : <b>09-5630</b>
and	:	
VERONICA TOELK-GARBARINO	:	
v.	:	
PAUL MORRISSEY	:	
and	:	
ANDY WARHOL FOUNDATION FOR	:	
THE VISUAL ARTS, INC.	:	
and	:	
IMAGE ENTERTAINMENT, INC.	:	
and	:	
SCORE-SARX COMPANY	:	

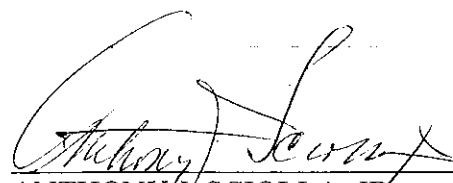
**CERTIFICATE OF SERVICE**

I, ANTHONY J. SCIOLLA, JR., ESQUIRE, hereby certify that a true and correct copy of Plaintiffs' Response to Defendants, Paul Morrissey and Image Entertainment, Inc.'s Motion to Dismiss the Second Amended Complaint was served upon the following attorneys for the Defendants, via first class U.S. regular mail, at the below addresses, on May 4<sup>th</sup>, 2010:

Robert C. Heim, Esquire  
Dechert, LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104-2808

Aaron M. Zeisler, Esquire  
Satterlee, Stephens, Burke & Burke, LLP  
230 Park Avenue  
New York, NY 10169

Matthew J. Borger, Esquire  
Klehr, Harrison, Harvey & Branzburg, LLP  
1835 Market Street  
Philadelphia, PA-19103

  
\_\_\_\_\_  
ANTHONY J. SCIOLLA, JR.  
Attorney for Plaintiffs